Delta Gas, Inc., a subsidiary of Louisiana Energy & Development Corporation *and* Joseph E. Defley, Jr. Case 15–CA–9709

19 February 1987

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JOHANSEN AND BABSON

On 19 February 1986 Administrative Law Judge Richard J. Linton issued the attached decision. The Respondent filed exceptions, a brief in support thereof, and an answering brief to the General Counsel's limited exceptions. The General Counsel filed limited exceptions, a brief in support thereof, and an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.

The judge found that the Respondent did not violate Section 8(a)(1) and (3) when on 25 June 1985[2] the Respondent, through Vice President Ed Daigle, demoted employee Anthony J. Duplessis from his position as a measurement technician assistant to a position as a laborer. The General Counsel excepts to this finding. The General Counsel contends that the Respondent has not met its burden of showing by a preponderance of the evidence that the demotion would have taken place even absent Duplessis' protected conduct in suing and assisting other employees to sue the Respondent for overtime pay and/or absent Duplessis' suspected union activities. We find merit in this exception.

As more fully described by the judge, sometime prior to March, Duplessis asked his supervisor Robert Cure about overtime pay. In March, Duplessis contacted the Department of Labor regarding the Respondent's responsibility to pay overtime. Duplessis also set up a meeting between the Respondent's employees and Attorney Joseph Defley on 28 May to discuss filing a lawsuit against the Respondent to collect unpaid overtime wages. Following the meeting, Duplessis and some of the employees gathered outside the attorney's office. Duplessis, along with the other employees, was observed by Supervisors Cure and Williams as they drove by. The groups waved at each other. In the days that followed, Cure unlawfully interrogated several employees concerning the purpose of the meeting and indicated his understanding that they intended to sue the Company to obtain overtime pay.

On 21 June employee John C. Ragas telephoned the Respondent's vice president, Ed Daigle, to report that a week's worth of gas-flow charts for one of the stations was defective because the clock mechanism had been wound too tightly. Daigle asked who was responsible and why the problem had gone uncorrected for a week. Ragas replied that Duplessis was responsible for checking the meter. Daigle then said, referring to Duplessis, "Tell your union-leading brother-in-law to stay out of the lawyer's office, and spend more time with his charts, or I'm going to have to start looking for more help."[3]

On the morning of 24 June, Duplessis, accompanied by employee Peter Williamson, drove a company boat to change charts in Joseph Bayou and South Pass. As Duplessis was en route to a Texaco platform, one of the engines threw a rod. His supervisor Robert Cure later inspected the engine and observed that a connecting rod had come outside the block. Cure reported the incident to Assistant Vice President Raber and then to Vice President Daigle. Daigle testified he considered this to be the "final straw" and he told Cure that he did not want Duplessis driving the boat again "and that means he can't do measurement work." Both Cure and Daigle testified they believed Duplessis was operating the boat at excessive throttle, causing it to blow out. Several weeks earlier

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent has also excepted to the judge's finding that the Respondent, through Supervisor Robert Cure, unlawfully interrogated employees about the purpose of their meeting at Attorney Defley's office. The Respondent excepts to this finding on the ground that the judge failed to consider the totality of the circumstances of the alleged interrogation. Based on our review of all the material facts and our application of the framework for analysis advanced in *Rossmore House*, 269 NLRB 1176 (1984), enfd. 760 F.2d 1006 (9th Cir. 1985), and reiterated in *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985), we adopt the judge's conclusion that Cure's repeated questioning about the purpose of the meeting amounted to coercive interrogation of the employees involved, in violation of Sec. 8(a)(1). In reaching this conclusion, we need not rely on the judge's discussion of Vice President Ed Daigle's later threats as bolstering the finding of an unlawful interrogation.

[2] All dates are 1985.

[3] The Respondent's employees had not initiated a union organizing campaign at the time these words were uttered. It is reasonable to infer, based on these words, that Daigle interpreted the visit to Attorney Defley's office as an effort to begin organizing a union and that he believed Duplessis was a leader in such an effort. A union organizing effort did begin in July.

Duplessis had pushed the boat to full throttle while Cure was a passenger. At that time, Cure told him to slow it down to three-quarters throttle and Duplessis obeyed. Cure had previously relayed this incident to Daigle. Duplessis admitted that just before the engine exploded he was operating it at better than three-quarters throttle, despite his knowledge that the engine had been knocking and was apparently in further need of repair.[4] After this incident, the engine had to be junked at an estimated monetary loss of $2200.

The following day when Duplessis returned to the office at the end of his shift, Cure told him to park his company truck and be prepared to work the next day as a laborer.[5] When Duplessis asked for a reason, Cure told him that he did not have to give him one. Duplessis then asked Cure to call Daigle and get one and Cure replied, "Ed Daigle said he didn't have to give [him] no goddamn reason." Duplessis then asked for and received permission to drive home to remove some personal possessions from the truck. When he returned an hour later, he slapped a copy of the overtime lawsuit on Cure's desk and told him, "This is why I'm being demoted." That evening Cure told Daigle about receiving a copy of the lawsuit. Both Daigle and Cure credibly testified that this was their first knowledge of the lawsuit.

A week later, on 2 July, Cure called Duplessis to his office and presented him with a memorandum dated 25 June, prepared by Assistant Vice President Raber pursuant to Daigle's instructions. The memo specified three reasons for his demotion. The reasons cited were:

> 1) Failure to correctly load charts and determine proper operation of measurement equipment at the LSGC Pend Oreille meter station #1-1145-1 resulting in no record of gas flow during the period of April 16, 1985 thru May 1, 1985 and loss of revenue to the Company.
>
> 2) Failure to properly service, maintain, and check the Delta Gas Shell Pipeline meter station #2120-005 resulting in the clock running down and no record of gas flow during the period of June 12, 1985 thru June 18, 1985 and loss of revenue to the Company.
>
> 3) Mis-use of Company workboat by overspeeding engines after being warned not to by Operations Supervisor, Robert Cure, and resulting in damage to a Johnson 115 H.P. outboard motor and great repair expense to the Company.

With regard to the first reason, the judge found that a faulty clock was responsible for the failure of recordation on the charts; J. C. Ragas, not Duplessis, was responsible for monitoring this location; Daigle did not consider Duplessis as having any responsibility for the faulty charts; and that by instructing or approving Raber's listing of this incident in the memo, Daigle evidenced "an intent to alter the facts in a blatant attempt to increase the odds that the demotion could not be successfully attacked."

The judge found that the citing of the second reason was also an exercise in "pad[ding] the list." The judge found that Ragas reported the problem with the Shell charts on 21 June when he telephoned Daigle to report the clock had been wound too tightly and recorded only 4 hours of gas flow and then stopped. Daigle asked who was in charge of the station and Ragas replied, "Duplessis." Daigle then made the statement, discussed earlier, "Tell your union-leading brother-in-law to stay out of the lawyer's office . . . ." Ragas credibly testified that both he and Duplessis had tried unsuccessfully on several occasions during the week of 12–18 June to get into the Shell station to check the chart but an electronic gate, which locked automatically, had been installed 3 months previously and they could not get in unless admitted by a Shell employee. Ragas reported the difficulty to Cure. The judge did not credit Daigle's testimony that he did not learn of the problem until a 12 August conference with Duplessis. Rather, he found that Daigle learned of the problem from Cure before 24 June. Consequently, the judge found that by listing the Shell charts as a reason for the demotion, Daigle was engaging in "a deliberate effort to nail Duplessis because of his protected actions."

At the hearing, Daigle advanced three more reasons for the demotion. The judge rejected them as pretextual. We agree. The judge also found that Duplessis' protected conduct, leading the Respondent to the erroneous belief that Duplessis was leading a union organizing campaign, was a motivating factor in the Respondent's decision to demote him. Nevertheless, the judge found that Daigle "reasonably blamed" Duplessis for the engine's destruction and concluded that the Respondent carried its burden of showing that notwithstanding Duplessis' protected conduct, and Daigle's erroneous suspicion of his union activities, the Respondent would have demoted him. The judge based this conclusion on two factors: Daigle's testimony that

[4] The VRO pump had been replaced on 31 May when the engine was put into the shop for repairs because of a knock. The engine continued to knock even after the repair. Duplessis told Cure that the problem had not been remedied. Cure said he would investigate.

[5] Although Duplessis' pay was not reduced, the transfer was a demotion from a job progression in skilled work to digging ditches.

Duplessis' destruction of the boat engine was the "final straw" and that he could not take "any more of that"; and his finding that the demotion was a measured action in which Daigle balanced the Company's needs against his personal sense of responsibility to Duplessis after having hired him.

The Board held in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982),[6] that once the General Counsel makes a prima facie showing that protected conduct was a motivating factor in an employer's action against an employee, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected conduct. An employer cannot carry its burden of persuasion by merely showing that it had a legitimate reason for the action, but must show by a preponderance of the evidence that the action would have taken place even absent the protected conduct.[7] A judge's personal belief that the employer's legitimate reason was sufficient to warrant the action taken is not a substitute for evidence that the employer would have relied on this reason alone.[8] If an employer fails to satisfy its burden of persuasion, the General Counsel's prima facie case stands unrefuted and a violation of the Act may be found.[9]

We agree with the judge that the General Counsel has established a prima facie case that the Respondent demoted Duplessis because of his protected concerted activities, i.e., his efforts to obtain overtime pay; the Respondent's belief that Duplessis was engaged in union activities; and the Respondent's union animus, as evidenced by its unlawful interrogations and unlawful threats of adverse consequences. We also agree with the judge's finding that all but one of the Respondent's asserted reasons for the demotion were pretextual. We are not, however, persuaded that the Respondent demoted Duplessis because of the boat engine's destruction. In this regard, we note that the judge failed to discuss certain relevant factors that demonstrate that Duplessis was not demoted because of the damage to the boat engine.

As previously noted, the Respondent refused to give Duplessis any reason for the demotion on 25 June. A failure to mention to an employee an asserted reason for an adverse action at the time the action is taken can indicate a discriminatory motive for the demotion.[10] Then, a week later, Cure belatedly presented Duplessis with a memo purporting to give the three reasons relied on in reaching the decision, two of which were clearly pretextual. Then, at the hearing, the Respondent attempted to bolster its defense with three additional pretextual reasons. The use of prextual reasons to support demoting a suspected union adherent strongly suggests that the reasons are advanced to mask unlawful conduct.[11] Pretext cannot hide unlawful motive. This is particularly true here. Daigle announced his antiunion position only 3 days before the demotion by threatening employees with adverse consequences if a union came in and threatening Duplessis in particular by telling J. C. Ragas to "Tell [his] union leading brother-in-law to stay out of the lawyer's office or [Daigle would] have to start looking for more help."

The one remaining reason, ostensibly legitimate, was not shown to have caused the decision to demote Duplessis. We reject the Respondent's alleged reliance on the boat engine incident. This defense is undermined by the fact that there was absolutely no investigation into the cause of the engine's destruction. Duplessis testified that a coworker was accompanying him at the time of the accident, yet there is no evidence that the Respondent contacted Duplessis or the coworker to verify what happened. Nor is there any evidence that the Respondent took the engine to the repair shop to determine the cause of failure. In addition, the engine had a history of trouble and Cure was aware that it continued to knock even after its pump was replaced on 31 May. Moreover, the Respondent did not offer any explanation why it did not conduct an investigation.

Finally, the judge' reliance on Daigle's testimony that Duplessis' destruction of the boat engines was the "final straw" is misplaced. By the judge's own analysis, all of Daigle's other asserted reasons were pretextual. The "final straw" is thus the only straw and it did not, in our view, form the basis of the Respondent's decision to demote Duplessis.[12]

Based on the foregoing, the Respondent has failed to carry its burden under *Wright Line* of per-

[6] Approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

[7] *Roure Bertrand Dupont, Inc.*, 271 NLRB 443 (1984). See also *Centre Property Management*, 277 NLRB 1376 (1985).

[8] *Bronco Wine Co.*, 256 NLRB 53, 54 fn. 8 (1981).

[9] See, e.g., *Bronco Wine Co.*, supra.

[10] See *Great Chinese American Sewing Co. v. NLRB*, 578 F.2d 251, 254–255 (9th Cir. 1978).

[11] *Louisiana Council 17, AFSCME*, 250 NLRB 880, 886 fn. 38 (1980).

[12] The judge's conclusion that Duplessis had been warned about safe engine speed and exceeded that speed overstates the testimony: Cure's warning to Duplessis was not clearly a general instruction not to exceed three-quarters throttle nor was he told that it was a restriction to protect the engine.

In response to our dissenting colleague, we note that he presumes exactly what the Respondent failed to prove, i.e., that at the time of the demotion the Respondent had a reasonable basis for concluding that Duplessis had abused the boat and that his operation of the boat caused the engine damage.

suading, by a preponderance of the evidence, that it would have demoted Duplessis in the absence of his protected concerted activity and Daigle's belief that he was engaged in union activity. Accordingly, we find that the demotion violated Section 8(a)(3) and (1) of the Act.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 5.

"5. By unlawfully demoting Anthony J. Duplessis on 25 June 1985, the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act."

AMENDED REMEDY

Having found that the Respondent violated Section 8(a)(3) and (1) of the Act, we shall order that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that A. J. Duplessis was unlawfully demoted on 25 June 1985, we shall order that the Respondent offer to Duplessis full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges. We shall also order the Respondent to remove from its files any reference to A. J. Duplessis' demotion, and to notify him in writing that this has been done and that evidence of this unlawful conduct will not be used as a basis for future personnel action against him.[13]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Delta Gas, Inc., a subsidiary of Louisiana Energy & Development, New Orleans, Louisiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(c) and reletter the subsequent paragraph.

"(c) Demoting or otherwise discriminating against any employees for engaging in union or protected concerted activity."

2. Insert the following as paragraphs 2(a) and (b) and reletter the subsequent paragraphs.

"(a) Offer Anthony J. Duplessis immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

"(b) Remove from its files any reference to the demotion of Anthony J. Duplessis and notify him in writing that this has been done and that evidence of this unlawful conduct will not be used as a basis for future personnel action against him."

3. Substitute the attached notice for that of the administrative law judge.

CHAIRMAN DOTSON, dissenting in part.

In agreement with the judge and contrary to my colleagues, I would find that the Respondent has established by a preponderance of the evidence that even in the absence of Duplessis' concerted activities, the Respondent would have reassigned him for having operated a boat in a manner which resulted in approximately $2200 in damage to the boat's engine. The Respondent, at no loss in pay, merely gave Duplessis an assignment which did not involve the risk that Duplessis would abuse equipment with a resulting substantial, additional loss.

On 24 June 1985, Duplessis was operating the company boat when the portside engine threw a rod or piston through the engine block. As a result, the engine had to be junked with a monetary loss estimated at $2200. The Respondent's vice president of engineering operations Ed Daigle and its operations supervisor Robert Cure believed that Duplessis had been "overspeeding" (operating at excessive throttle) the boat. They based this belief on the fact that several weeks earlier, with Cure riding as a passenger, Duplessis pushed the boat to full throttle. Cure instructed Duplessis to slow down to three-quarters throttle, which instruction Duplessis followed. An employee, J. C. Ragas, testified that he operates the Respondent's boats at no more than three-quarters engine speed and that an engine can tear apart if the boat is operated at full throttle. Duplessis acknowledges that he was operating the boat at more than three-quarters throttle "not quite all the way open" when the engine exploded. Further, he admits he did so while he was aware the engine was knocking and apparently in need of repair. The day after the engine exploded, Duplessis was assigned to a construction crew to work as a laborer digging ditches, an assignment that did not involve operating boats.[1]

Ordinarily, the mere reassignment, at no loss of pay, of an employee under these circumstances would be regarded as a relatively mild move simply designed to ensure that no other equipment

[13] Backpay has not been awarded inasmuch as Duplessis maintained the same wage rate after the demotion.

[1] Duplessis would not be able to continue performing his previous measurement work without operating a boat because many of the Respondent's stations are located in bays and can be reached only by boat.

was operated in a way that might result in the Respondent suffering a further loss.[2] Indeed, the Respondent in the past had taken much more severe action when, in somewhat similar circumstances, it discharged Raymond Antoine in July 1984 for severely damaging a truck engine while driving it without oil and thereby creating a $2600 repair bill.

It is true that here the Respondent was not entirely forthcoming in its explanation for the demotion. If it had been, it would, in all likelihood, not be in its present difficulty. It did initially refuse to disclose to Duplessis the reason for his reassignment. Although I am sure that Duplessis in fact fully understood why he was being transferred to other duties, it would have been much better had the Respondent not refused to state the reasons immediately. Next, when it did state reasons for the change, in addition to citing the wrecking of the boat's engine, it stated reasons which the judge correctly concluded were pretextual and which led the judge to the conclusion that the Respondent was partially motivated by Duplessis' protected activities in its actions toward him.

However, even accepting the view that the General Counsel has met her burden to show that Duplessis' concerted activities in part motivated the reassignment, the Respondent has fully demonstrated that the relatively mild action taken against Duplessis would have been taken even in the absence of his concerted activities. Duplessis had operated a boat in a manner which resulted in extensive damage to the motor. The Respondent took minimal measures to ensure that he did not damage additional equipment. The action was taken instanter when the Respondent became aware of Duplessis' mishap. Further, the actions were consistent with, and less than, a previous action against an employee who wrecked a truck engine. In these circumstances, in agreement with the recommendation of the judge, I would dismiss the complaint allegations relating to Duplessis' demotion.

[2] Because Duplessis was being reassigned at no loss of pay, and not discharged, the need for further investigation prior to taking the action is substantially reduced. The Respondent had ample evidence on which to base a belief that if Duplessis continued to operate the boat, it ran a high risk of damage to its equipment.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively question you about your protected concerted activities.

WE WILL NOT threaten to fire you for engaging in union or other protected concerted activities.

WE WILL NOT demote or otherwise discriminate against you for engaging in union or protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Anthony J. Duplessis immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL remove from our files any reference to the demotion of Anthony J. Duplessis and notify him in writing that this has been done and that evidence of this unlawful conduct will not be used as a basis for future personnel actions against him.

DELTA GAS, INC., A SUBSIDIARY OF LOUISIANA ENERGY & DEVELOPMENT CORPORATION

Clement J. Kennington, Esq., for the General Counsel.
R. Pepper Crutcher Jr., Esq., Everett H. Mechem, Esq., and with them on brief *Frederick S. Kullman, Esq. (Kullman, Inman, Bee & Downing)*, of New Orleans, Louisiana, for the Respondent.
Joseph E. Defley Jr., Esq., of Port Sulphur, Louisiana, for himself.

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge. This case was tried before me in New Orleans, Louisiana, on 16–17 September 1985 pursuant to the 14 August 1985 complaint issued by the General Counsel of the National Labor Relations Board through the Acting Regional Director for Region 15 of the Board. The complaint is based on a charge, subsequently amended, filed 5 July 1985 by Joseph E. Defley Jr. (Defley or Charging Party) against Delta Gas Inc., a subsidiary of Louisiana Energy & Development Corporation (Respondent or Delta Gas).[1]

In the complaint the General Counsel alleges that the Respondent violated Section 8(a)(1) of the Act by interrogating and threatening employees and Section 8(a)(3) and (1) of the Act on 25 June by demoting Anthony J. Duplessis from the position of assistant measurement technician to laborer because of Duplessis' union and other protected activities. At the hearing the General Counsel announced that the demotion allegation, and the General Counsel's evidence on the subject, was based on the Respondent's belief that Duplessis and other employees had engaged in union activities, and that the General Counsel's case was not premised on actual union activities (1:40–44).[2]

By its answer Respondent admits certain factual matters but denies violating the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

A Louisiana corporation with offices in New Orleans, Louisiana, and a facility at Homeplace, Louisiana, Respondent transports and distributes natural gas. During the past 12 months Respondent derived gross revenues exceeding $250,000 from its business operation, and during the same period Respondent purchased and received goods and materials exceeding $50,000 in value from points located directly outside Louisiana. Respondent admits and I find that it is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Introduction*

1. Nature of Respondent's operation

As mentioned, Delta Gas transports and distributes natural gas. Although the record does not contain a detailed description of Respondent's business, it appears that Respondent's business includes gathering natural gas, owning some pipeline, and distributing gas. Respondent's vice president of engineering and operations since April 1982 has been Ed Daigle (1:58). Daigle describes the Company as "a small gas system" which, to survive in today's (deregulated) natural gas market, must interconnect with a big pipeline company "which can transport your gas for you." (1:75.)

Tennessee Gas Pipeline Company (TGP) is a large organization, and Respondent's system interconnects with TGP at several points (1:75).[3] At these points gas will flow from Respondent to TGP and from TGP to Respondent (1:75). As the record reflects, Respondent does a similar business with other firms, including Shell Pipeline Company. The flow of gas is measured at these interconnected points.

Most of the measurements are done by use of a clock mechanism that has arms, using different colors of ink, to record the measurements on round paper charts (2:448; R. Exhs. 10, 11, 12). Measurement lines are made on the charts when the mechanism rotates. The mechanism rotates because the clock is wound, by hand, to run for up to 8.5 days (2:428–431). The clocks, of course, must be rewound and the charts changed on a timely basis (2:355).

Respondent's employees who set the clocks, take the measurements, and change the charts are called measurement technicians. The measurement technician even reviews the charts before they are forwarded to Respondent's New Orleans office (2:494). It is clear that Respondent considers the measurement technician's function as being very critical. Indeed, Daigle even testified that Respondent considers measurement technicians "at the supervisory level" (2:496).[4]

The firms compensate each other based on the measurements made on the flow of gas at the interconnect points (2:448). On occasion, such as when a malfunction has occurred with the clock-chart mechanism, Respondent has to estimate the amount of gas that has flowed and, therefore, the amount of money it must bill its customers (1:91–93, 206–208; 2:518). Daigle testified that there are several methods used to estimate, but that he tries to avoid the necessity for doing so because of the adverse impact on customer relations (2:519–520, 524–525). To avoid or minimize this problem, Daigle testified, employees are to inspect the charts at least once a week between chart changes and preferably even more frequently (2:449).

2. The Homeplace staff

A. J. Duplessis, the alleged discriminatee, was hired by Daigle 25 January 1985 (2:329, 486). Duplessis had no prior experience in gas measurement work (2:329). He

[1] All dates are for 1985 unless otherwise indicated.

[2] References to the two-volume transcript of testimony are by volume and page.

[3] There also is a reference in the record to TGT or Tennessee Gas Transmission Company (2:475). I note that TGT, a subsidiary of Tenneco Inc., has certain administrative functions relative to Tennessee Gas Pipeline Company (TGP). *Brown's Directory of North American and International Gas Companies* at 230 (1983 ed.).

[4] There is no contention that the measurement technicians are statutory supervisors. It appears that Daigle's comment is based on his testimony that the technicians, rather than their superior, are to review the charts (2:496) and on the evidence showing that J. C. Ragas, a measurement technician, was designated by Daigle to train A. J. Duplessis (1:82, 118; 2:329).

was hired as a measurement technician assistant—a helper (2:329, 532). Robert R. Cure supervised Ragas[5] and Duplessis (1:112; 2:531). Cure is Respondent's operations supervisor at the Homeplace facility and he reports to Daigle, whose office is in New Orleans (1:59–61, 112; 2:523, 530). Also reporting to Daigle from Homeplace is Lawrence Williams, gas superintendent (1:60, 61).

The Homeplace facility is about 50 miles south of New Orleans (2:523). Homeplace is not shown on the usual map or atlas, but it is located about 2 miles south of Port Sulphur, Louisiana (1:135, 213; 2:546).

In addition to Supervisors Cure and Williams, Respondent has 16 employees at the Homeplace facility (1:72). It appears that most of the employees report to Williams, with Cure supervising the gas measurement function.[6]

On 24 June Daigle decided to transfer Duplessis from gas measurement (1:87; 2:458, 541–542), and he directed his assistant, John Raber,[7] to issue a memo to Duplessis outlining the reasons for his transfer (1:63–64; 2:504). The transfer was described in the memo as a demotion (G.C. Exh. 3) and was a demotion in fact. Duplessis was demoted to the position of laborer (G.C. Exh. 3; 2:330). Even though his pay rate was not reduced (2:406, 472, 522), he now digs ditches with a shovel as part of the labor crew (2:409). As Duplessis testified, there is a big difference between the skilled work of a measurement technician and the manual labor of digging ditches (2:407).

Raber's memo and other details concerning Duplessis' work and demotion are treated later.

3. Duplessis sparks action to be paid for overtime worked

Beginning 1 July Respondent changed from paying its employees a salary and began paying them on an hourly basis with payment for overtime worked (2:525–526, 528). Previous to that date the employees would not be paid any money over the amount of their salaries when they worked overtime (1:211; 2:330).[8]

Daigle testified that for a couple of years before May 1985 individual employees would inquire why they were not being paid for overtime worked (2:490). According to Daigle, for a long time he had felt that the employees should be compensated on an hourly basis and be paid for overtime worked, and in mid-January 1985 he so recommended to his superior, J. Q. Delap, Respondent's president (2:416, 491).

Duplessis testified that he first worked overtime about 1 March, and that on two or three occasions before that he had asked Supervisor Cure why the employees were not paid for overtime work. Cure simply said, in effect, that it was company policy not to pay (2:331). In March Duplessis contacted one Bruce Clark with the Wage-Hour Division of the U.S. Department of Labor. After that conversation Duplessis suggested to employees Mervin Riley and Errol Turner that they call Clark themselves because it appeared that the law entitled all of them to be paid for any overtime worked (2:332).

Duplessis thereafter contacted a local attorney, Charging Party Joseph E. Defley Jr. of Port Sulphur, concerning the overtime matter (2:332). Defley told Duplessis he would meet with the employees (2:333). Duplessis informed the employees, and in the late afternoon of Tuesday, 28 May, 14 current employees and 2 former employees met for an hour or more with Attorney Defley at the latter's Port Sulphur office.[9]

The parties stipulated that on Friday, 21 June, suit was filed by Defley in the case of *Duplessis et al. v. Delta Gas Inc. and Louisiana Energy & Development Corporation*, Civil Action No. 85-2754, before the U.S. District Court for the Eastern District of Louisiana (1:99; 2:544). The complaint, in evidence as Jt. Exh. 2, reflects that the plaintiffs sued "to recover unpaid minimum wages and unpaid overtime compensation under the provisions of the Fair Labor Standards Act of 1938 as amended . . . ." Further reference to this subject is made below.

B. *Allegations of Interference, Restraint, and Coercion*

1. Background

Charging Party Defley's law office is located at Port Sulphur on Highway 23. Thus, as one drives between Respondent's New Orleans and Homeplace offices, he drives past Defley's office, which is a mile or so north (toward New Orleans) of the Homeplace facility (1:135, 196, 213; 2:546). As a photograph in evidence reflects (G.C. Exh. 7), Defley's office apparently is situated in his home.[10] A. J. Duplessis arranged with Attorney Defley for the employees to meet with Defley on 28 May and told several employees (1:126, 127, 217; 2:313, 332–333). It appears that Mervin Riley and Errol Turner thereafter informed some other employees of the meeting (1:127).

At one point some of the employees had stepped outside Defley's office, either at a smoke break or at the end of the meeting, and they observed Supervisors Cure and Williams drive by on the highway. The groups waved at each other.[11] Cure acknowledged the incident, but testi-

[5] More than one employee bears the name Ragas. When I refer to Ragas, I mean J. C. Ragas. Any others will be further identified.

[6] It is clear that during the relevant period only Cure, Ragas, and Duplessis were involved with gas measurement at Homeplace (2:242, 434, 531). The other employees appear to work for Williams in construction or other service work.

[7] Raber works in the New Orleans office as senior engineer reporting to Daigle (1:62). Raber did not testify.

[8] References in the record to overtime work presumably refer to work in excess of 40 hours a workweek.

[9] Although some employee witnesses varied from pretrial statements indicating a later date, it is clear that 28 May is the correct date based on the sequence of events acknowledged by Respondent. Employee August Mackey's pretrial statement (R. Exh. 6), relied on by Respondent to show that the meeting with lawyer Defley occurred near mid-June, obviously places work events so late that they would have occurred during his vacation of 24 June to 9 July. I have considered, and rejected, Supervisor Cure's testimony (to be discussed in more detail later) that he observed the employees gathered at Defley's office on 11 June as he and Williams returned to Homeplace from New Orleans.

[10] A sign in the front yard near the highway announces the law office of Attorney Defley (1:130).

[11] Cure testified that Defley's home office sits about 200 feet off the highway (2:545). Duplessis was one of those in the employee group waving (2:333–334).

fied that it occurred on 11 June as he and Williams returned from New Orleans and not on some earlier date (2:546–549, 556). What Cure observed, in addition to several of Respondent's employees, was about a half dozen Delta Gas trucks parked at the office as well as some personal vehicles. Cure concedes that he expressed to Williams, "I wonder what the hell is going on." (2:557.) Williams did not testify.

Cure and Williams apparently did pass by Defley's office on 11 June, but I find that the occasion they observed the employees and Delta Gas trucks there was on 28 May, not 11 June.

Vice President Daigle testified that in late May Supervisors Cure and Williams informed Daigle and Raber that the Delta Gas employees were complaining about not being paid hourly plus overtime (1:65; 2:415). Cure confirms that he so reported to Daigle (2:558–559). Daigle instructed his supervisors to arrange a meeting for him and Raber to travel to Homeplace and meet with the employees on Friday, 31 May (1:65–66; 2:415–416).

Before we pass to the meeting of 31 May, it is important that we notice the sequence of events. It is undisputed that in late May Supervisor Cure and Williams conducted a meeting with all Homeplace employees. Daigle so testified (2:415).[12] Ragas testified that the supervisors spoke to them about keeping the warehouse clean and warned the employees that they could be penalized if tools were lost (1:125).

Ragas spoke up and asked why the supervisors always talked about penalizing employees and never about treating them to a barbecue or steak dinner whenever the employees did something good. From this point the discussion turned to complaints by employees that they had to work overtime without getting paid for it. Cure and Lawrence responded that they could not do anything about the overtime policy, but that they would raise that subject with the New Orleans office (1:125–126).

During the discussion about overtime, Ragas further testified, Cure told the group that Delta Gas had some of the best lawyers around, and if the employees wanted to fight for overtime they could get themselves a lawyer and "go for it."[13] As Ragas testified, "A couple of days later, we went for it" by meeting with Attorney Defley on 28 May (1:125, 126).

In light of this sequence, I find that the meeting Supervisors Cure and Williams held with employees occurred about Friday, 24 May. That places the supervisory meeting 4 days before the Defley meeting, but as the "couple of days" mentioned by Ragas is an approximating phrase, and as 2 days would place the company meeting on a Sunday, I think it far more logical that the meeting occurred on the last previous workday, Friday, 24 May. Moreover, I note that the company meeting Daigle scheduled for 31 May was for a Friday. Thus, I find that the meeting Supervisors Cure and Williams conducted occurred about 24 May.

[12] Cure mentions such a meeting but does not place the approximate date (2:550). I find that he was referring to this late May 1985 meeting.

[13] Cure did not flatly deny this, and testified that a walkout was discussed (2:550). I do not credit Cure. He appeared to me to be an unreliable witness. Employee August J. Mackey affirms the essentials of Ragas' testimony on this subject (2:294–295).

2. Events leading to meeting of 21 June 1985

a. *Complaint paragraphs 7(a), (b), and (c)*

As employees arrived for work at the Homeplace warehouse on 29 May, the morning after Supervisors Cure and Williams observed their employees at Attorney Defley's office, Cure began interrogating some of the employees about their meeting at Defley's office.[14] Thus, Ragas testified that Cure said he had seen them at Defley's office and asked him what went on. Ragas replied, "Nothing that I know of." Cure persisted and Ragas said, "I don't know nothing about nothing" (1:135–136).[15] Ragas places employees August Mackey and Gerald Ragas at this conversation (1:136). Mackey described a similar conversation, but Gerald Ragas, also a witness, did not.

Serviceman August J. Mackey testified that Cure approached him and Ragas that morning and asked what they had been doing at the lawyer's office. Ragas responded that it was none of Cure's business. To this Cure stated that he knew why Ragas and Mackey were there but why, he asked, was (former employee) Wilson Madison.[16]

Trenching machine operator Mervin J. Riley Jr. described a similar interrogation by Cure as occurring the morning of 29 May.[17] Cure came up and, saying that he was "just curious," stated that he knew what the other employees were doing (at Defley's), but why was (former employee) Madison there? Riley replied that he did not know (2:317).

Ragas also testified that about 2 days later (31 May), and in the presence of some employees (whose names appear garbled in the record) in the warehouse, Cure again asked Ragas what went on at the lawyer's office.[18] Ragas answered that he did not know and that Cure probably knew more than Ragas (1:136–137). No other witness appears to have testified about this specific incident.

Intervening at this point is the meeting Daigle held with employees on 31 May. Rather than interrupting the discussion of Cure's alleged conduct, I shall defer discussing the 31 May meeting for a moment.

As amended over objection at the hearing (1:7, 12, 17), complaint paragraph 7(c) alleges that at the Delta Marina on or about 13 June Respondent, through Supervisor Cure, "orally interrogated an employee about the union and/or protected concerted activities of its employees." Testifying in support of this allegation, Ragas asserted that as he and Cure were en route by company truck to the Delta Marina about 5 a.m. on 13 June Cure again asked him about the matter: "You know, I'm curi-

[14] Complaint par. 7(a) as amended at the hearing (1:7, 12, 17).

[15] A couple of hours later Supervisor Williams asked Ragas what had happened at Defley's office and Ragas replied that if Williams would have been there he would know (1:136). There is no complaint allegation concerning this and Williams did not testify.

[16] Wilson Madison, one of the plaintiffs named in the lawsuit Defley filed (Jt. Exh. 2), was a former employee and one of those present at Defley's office (1:128–129).

[17] Riley works under Supervisor Williams (2:313).

[18] Complaint par. 7(b), as amended at the hearing, alleges interrogation as occurring on 3 or 4 June. The slight variance is immaterial.

ous, what went on at the lawyer's office? I hear you all are going to sue the company." Ragas said Cure knew more than he did. "Well, evidently you're not going to tell me anything," commented Cure. To this Ragas replied, "No, I'm sure not." (1:137–138)

About an hour later, at a platform of Texaco Oil Company, a similar conversation occurred. This time Ragas added, "You must be our inside informant," but he told Cure, "I don't know nothing about nothing." This conversation ended as the earlier one, with Cure observing that Ragas evidently was not going to tell him anything, and Ragas confirming that to be the case (1:139).[19]

Respecting these alleged incidents, Supervisor Cure testified that although he may have commented to Ragas about seeing him and the Delta Gas trucks at Defley's, he never asked any employee why they were there (2:549, 557). This is so even though, as Cure testified, "I knew that something was going down but I didn't know what it was." (2:558)

Cure testified unpersuasively, whereas Ragas, Mackey, and Riley testified in a believable fashion. Given Cure's admission of his possible comment to Ragas, as well as his acknowledged curiosity about what was happening at Attorney Defley's, it is clear that the testimony of the employees is far more plausible than Cure's version. Accordingly, I find that on 29 and 31 May, and again on 13 June, Supervisor Robert R. Cure interrogated employees concerning the purpose of their meeting at Attorney Defley's office on 28 May.

As stipulated by the parties, the employees did not sign any union cards or attend any union meetings before July. Allegations in the complaint concerning union activities rest, explained counsel for the General Counsel, on Respondent's suspicion, in turn based on comments by Daigle, that the employees were engaged in union activities (1:40–44). We shall come to Daigle's asserted suspicions/comments shortly.

b. *Conclusions regarding Cure's interrogations*

Respondent argues that the evidence on Cure's inquiries, even if credited (as I have done), does not rise to the level of a violation. In light of Cure's repeated questioning about the purpose[20] of employees meeting at lawyer Defley's office and—as we shall see shortly—the threats made by Vice President Daigle,[21] I find that Respondent violated Section 8(a)(1) of the Act by Supervisor Cure's interrogating employees concerning the nature of their protected concerted activity.

3. Events of 21 June 1985

a. *Complaint paragraphs 6(a) and (b)*

Complaint paragraph 6(a) alleges that about 21 June Respondent, through Daigle at the Homeplace facility, orally "threatened an employee by telling said employee that Respondent would discharge another employee because of the other employee's union and/or concerted activities."

Ragas testified that about 2 p.m. on 21 June he telephoned Daigle and reported that the charts, delivered to the New Orleans office that day, for the Nairn, Louisiana station of Shell Pipeline Company were defective. The defect resulted, Ragas explained, because the clock mechanism had been wound too tight when set on 12 June. As a result, continued Ragas, the clock registered only 4 hours of gas flow and then stopped so that the rest of the charts for that week were blank (1:142–143).

Daigle agrees that there was such a call and that he asked Ragas who was in charge of the station and Ragas told him Duplessis. Daigle asked why Duplessis allowed this to go uncorrected for a whole week (2:238, 451). Ragas answered that Duplessis was supposed to go back and check the meter, that Ragas thought he had done so, but that Ragas would get with him and find out what had happened (2:238, Ragas).[22]

Daigle then said, "Tell your union-leading brother-in-law to stay out of the lawyer's office, and spend more time with his charts, or I'm going to have to start looking for more help" (1:143).[23] Ragas answered that he would talk to Duplessis about the charts and give him Daigle's message. Daigle stated that he would be there later that day and that they would talk about the charts (1:144). As the record reflects, it was not until a conference held about 12 August that they discussed these charts.

We now turn back to the meeting of 31 May. It is undisputed that on 31 May Daigle and Raber, along with Cure and Williams, met with the Homeplace employees. Daigle testified that at the meeting the employees requested specific job classifications, job descriptions, and hourly pay with pay for overtime worked. Daigle promised to recommend that Respondent convert the employees to an hourly paid basis, with overtime (1:64–66; 2:415–416, 423). Respecting the job descriptions and classifications, Daigle stated that he and Raber would get back with them in 2 weeks (2:423–424).

Because of the press of business, Daigle and Raber had to extend the meeting date another week until Friday, 21 June (2:424). During the interim, Raber contacted various utility companies concerning job descriptions and

[19] Respondent's motion to strike Ragas' testimony, in keeping with Respondent's objection to the amended allegation, was denied (1:141).

[20] A different result might be indicated if Supervisor Cure had focused his inquiry on why employees were using Delta Gas vehicles to meet at Attorney Defley's office. Instead, Cure, I find, sought to confirm his suspicion that the employees were meeting there to proceed as he had suggested—to get a lawyer and sue for unpaid overtime.

[21] Although the threats came later, they supply additional and reinforcing coercive force to Cure's interrogations.

[22] Daigle's version (which is not inconsistent) is that Ragas said he had been talking to Duplessis about that (2:451). On cross-examination, Ragas credibly denied telling Daigle that he had been having problems with Duplessis (2:238).

[23] Ragas and Duplessis married two women who are sisters (1:113). Daigle testified that he does not "think" he made this remark, that he does not recall it, and that he thinks he would recall it had he made it (2:452). I credit Ragas, who testified in a positive manner on this. Moreover, this evidence is consistent with remarks made to all employees at a meeting later that afternoon.

classifications and did a lot of work in drafting some sample descriptions and classifications (1:62, 66; 2:423).

Daigle further testified that following the 31 May meeting he made his recommendation to President J. Q. Delap, and that on 19 June Delap informed him that effective 1 July the employees would convert to an hourly pay basis with pay for overtime worked (1:70; 2:491, 521, 525, 528).

Complaint paragraph 6(b) alleges that at the Homeplace facility, about 21 June, Respondent, through Daigle, orally "threatened employees by telling them he would discharge said employees because of their union and/or protected concerted activities." This allegation refers to remarks Daigle assertedly made at the company meeting he, Raber, Cure, and Williams held with employees the afternoon of Friday, 21 June.

At that meeting Daigle announced the change regarding employees converting to hourly pay with overtime (1:70, 2:521, 525). Raber then distributed six work sets of the sample job descriptions and classifications, plus a tentative organizational chart, which he had drafted since the 31 May meeting (1:62, 67; 2:419, 424). A discussion ensued concerning these documents.

As Daigle describes it, the reaction of the employees to the work sets was "mixed at best" (2:425). The men felt that the proposed organizational chart tended to place them in lower rated positions than what they felt they were performing. They also were concerned that new employees could be hired and placed in the higher rated positions shown on the chart as vacant. Their concern apparently was compounded by Daigle's explanation that they could bid, or would have to bid, in order to be placed in a higher rated position, and that no promotions could be made or raises given until, under company policy, 1 October (2:420–421).

Employee Mervin J. Riley Jr. testified that he asked a series of questions concerning why the employees could not be placed in higher classifications and receive more money because they already were doing the skilled work. Daigle responded, "You're going to do what we tell you to do, we're not going to be no union, we're not going to have a union, and before a union comes in this company we'll start all over from scratch" (2:320). Answering that he was not worried about the Union, Riley asked that he be paid for the work he did.

Duplessis testified that following some coarse language by Raber concerning all the effort Raber had made preparing the working documents, he asked Daigle why the men could not be paid the rate for the higher rated position when they did that work, plus differential pay for evening work. Daigle said Duplessis was talking union, that he would not see a union in the Company, and that before he did he would fire everyone and start again (2:336). Testimony of other employee witnesses (Ragas, Turner, Riley, and Mackey) supports Duplessis. On cross-examination, employee Mervin Riley acknowledged that Daigle responded to Duplessis by saying that Delta Gas did not work like a union company, and could not have separate job classifications for every man because the Company did not have enough employees (2:326–327).[24] This does not exclude the other statements attributed to Daigle, nor did Riley so testify.

According to Daigle, when Duplessis inquired why an employee could not be paid the higher rate when he did that work, Daigle replied that such was the way the union operates, but Delta Gas is a small nonunion company and that Delta Gas would not be doing it that way (2:425–426).[25] Denying he told the employees he would close the place and start over rather than be union, Daigle testified that he does not have that kind of authority (2:426).[26] Neither Raber nor Supervisor Williams testified. Although Respondent called Supervisor Cure as a witness, it did not ask Cure about this subject.

b. *Conclusions regarding Daigle's alleged threats*

It appears that Respondent's employees did initiate a union organizing campaign, but that they did not do so until July. Daigle testified that it was not until mid-July that he was informed of such a campaign and that the news shocked him (2:488–489). Because the employees did not engage in any union activities before July (as was stipulated), Respondent argues that it is clear Daigle made no reference to a union.

I have found, however, that Supervisors Cure and Williams observed their employees at lawyer Defley's office on 28 May, and that Supervisor Cure thereafter interrogated employees concerning the meeting. Knowledge of Cure's conduct is imputed to Daigle and Respondent.

It is not irrational for Daigle to associate the employees' visit with Defley as part of a union organizing effort. Cure had seen Duplessis at Defley's, and given the small number of employees (16) working at Homeplace, and that it was Duplessis who arranged the meeting and personally told several employees of the meeting, it is reasonable to infer that Daigle identified Duplessis as the leader of a movement to organize a union.

Aside from inferences and plausibility, however, I simply credit the witnesses of the General Counsel who testified in a persuasive manner concerning Daigle's references to a union. How Daigle reached this belief or suspicion is an interesting, and relevant, inquiry, but it is not necessary that the General Counsel show how that was done when the other evidence, as here, establishes that Daigle in fact made his statements.

As Daigle testified and employee Mervin J. Riley Jr. confirmed, Daigle, either before or after his outburst against unions, made his statement about Delta Gas being a small company that did not have enough employees to have or to staff all the job classifications that character-

[24] Of course, this would not be a direct answer to the question Duplessis asked.

[25] This testimony came when Daigle testified during Respondent's case. When called by counsel for the General Counsel at the beginning of the hearing under Fed.R.Evid. 611(c), Daigle testified that although Duplessis did make one statement that overtime was the way to go, any (other) remarks Duplessis made were of a casual nature and nothing of importance (1:69, 73).

[26] Regardless of Daigle's actual authority in this respect, Daigle is a high executive official of Delta Gas and his executive responsibility includes Homeplace (1:59). Nothing in the record detracts from his apparent authority to carry out the threats attributed to him.

ize unionized firms. As Daigle is a corporate vice president, his threats about the adverse consequences of unionizing would reasonably be viewed by employees as serious. Accordingly, I find that, by Daigle's threats, Respondent violated Section 8(a)(1) of the Act.

4. The *Johnnie's Poultry* allegation

Added at the beginning of the hearing, complaint paragraph 6(a) alleges that about 12 and 13 August Respondent, through Daigle, interrogated employees concerning the facts underlying the demotion of A. J. Duplessis without providing the requisite safeguards as specified by the Board in *Johnnie's Poultry Co.*, 146 NLRB 770 (1964), and its progeny (1:6).

On 12 August Daigle interviewed Supervisor Cure and employees Ragas and Duplessis[27] regarding problems with some missing charts.[28] This postdates the demotion of Duplessis and took place only 2 days before the complaint issued on 14 August. Daigle concedes that prior to the 12 August conference he had learned that NLRB Region 15 had announced its decision to issue a complaint on the charge filed in this case (2:517–518).

Daigle testified that the questioning was necessary to prevent the incidents from reoccurring and to permit Respondent to formulate a bill it could submit to its customers (2:435). An additional factor triggering the meeting, Daigle testified, was a 9 August memo to him from senior engineer John A. Raber (R. Exh. 13–1).[29]

Respondent urges me to reconsider that ruling. On reconsidering my ruling, I reverse it and now receive in evidence Respondent Exh. 13–1, the Raber memo of 9 August, for the limited purpose offered—to show the report made by Raber. The memo runs slightly over one page.

According to the memo, Raber received a call on 9 August from Jim Hollingsworth of Tennessee Gas complaining of delays by Delta Gas personnel in meeting scheduled times to calibrate meters. The specific incident prompting the call from Tennessee Gas was a meeting for that very day at which Ragas allegedly was "extremely late." Hollingsworth reported that an NLRB agent had contacted TGP's field personnel, Ralph Sonnier and Tommy Jones, concerning (the charge relating to) Duplessis.

In his memo Raber reports that he then telephoned Sonnier. He and Sonnier discussed that morning's problem, a heated conversation Sonnier had with Respondent's supervisor Cure, and eventually the contact by NLRB agent Annie Archie. Sonnier allegedly described serious problems with the performance of both Ragas and Duplessis.

Although Raber's memo does not mention any prior contact with the Tennessee Gas people relating to the quality of service from Delta Gas, Daigle testified that about May he had dispatched Raber to confer with Sonnier and Jones when they threatened to recommend that TGP cease doing business with Delta Gas because of measurement service problems with Delta Gas (1:76, 81; 2:482, 514).

This subject, of course, gets into the matter of Duplessis' demotion. At this point it is sufficient to note Daigle's testimony that although the Raber memo sparked Daigle's calling of the 12 August meeting, at that meeting only the incomplete charts were discussed (2:480–481).

At the 12 August meeting Duplessis initially attempted to answer Daigle's questions, but, feeling that he was being unfairly interrogated, he ceased to respond. Daigle told him to come back the next day ready to answer the questions. Duplessis returned on 13 August, but still was unable to answer questions relating to responsibility for the charts even under the threat of suspension.

The General Counsel argues that Respondent's real purpose in calling the 12 August meeting was to "investigate and fix responsibility for the missing charts months after the incidents in question." And further, "It is submitted that he [Daigle] had no reason for the delay and that the belated investigation was designed to ascertain facts so as to permit Respondent to prepare for the unfair labor practice hearing." (Br. at 8, 9.) Respondent does not contend that Daigle complied with the requirements of *Johnnie's Poultry* and, indeed, contends that such case is inapposite.

I agree with the General Counsel that Daigle's unannounced purpose in holding the meeting of 12–13 August with Duplessis was principally to prepare its defense to the complaint about to be issued by NLRB Region 15. However, the rule of *Johnnie's Poultry* does not apply to every interview an employer conducts with his employees. *Levingston Shipbuilding Co.*, 249 NLRB 1 (1980); *Pacific Southwest Airlines*, 242 NLRB 1169, 1170 fn. 4 (1979). Where, as here, the interview covers only work performance and does not touch on any protected activities, the *Johnnie's Poultry* rule does not apply. *Alton Box Board Co.*, 155 NLRB 1025 (1965). Accordingly, I shall dismiss complaint paragraph 6A.

C. *The Allegation of Discrimination*

1. Introduction

The single allegation of discrimination concerns the 25 June demotion of A. J. Duplessis. As detailed earlier, Vice President Daigle personally hired A. J. Duplessis on 25 January as an assistant measurement technician (2:329, 486). Duplessis worked on Supervisor Robert Cure's crew, and was assigned to work with measurement technician J. C. Ragas for training.

On 24 June Daigle decided that Duplessis should be removed from measurement work and transferred to the construction crew. Although Duplessis' pay was not reduced, the effect of the transfer was a demotion from a job progression in skilled work to the work of a laborer digging ditches with a shovel.

When Duplessis returned to the office at the end of his work on Tuesday, 25 June, Supervisor Cure instructed him to park his company truck and be prepared to report to work the next day as a laborer (2:337, 376). When Duplessis asked for a reason, Cure told him they did not

[27] Mary Jamison, an office secretary, also attended (1:156; 2:241, 432, 545, 551).

[28] The charts were from the Pend Oreille and Shell Nairn stations.

[29] Over Respondent's objections, I rejected R. Exh. 13–1 (2:481, 484).

have to give him one. Duplessis asked Cure to call Daigle and get one. Cure did so and told him Daigle said he did not have to give "any goddamn reason" to Duplessis (2:337, 376–377, 543).[30]

Duplessis asked for, and received, Cure's permission to drive home, remove some personal belongings from the vehicle, and then return and park the truck (2:544). As Cure testified, without contradiction, Duplessis returned about an hour later and, slapping a copy of *Duplessis et al. v. Delta Gas* on Cure's desk, told Cure, "This is why I'm being demoted." (2:544) If Cure replied, his answer is not given in the record.

Later that evening Cure reported to Raber and Daigle about receiving a copy of the lawsuit from Duplessis (2:488, 545). Daigle and Cure testified that was their first knowledge of the lawsuit. Quite likely that is true insofar as the actual filing of the suit is concerned but, as I have found, they strongly suspected that the occasion of the employees' 28 May meeting with lawyer Defley related to a lawsuit for violation of the Federal wage and hour law.[31]

Daigle testified that he and Raber discussed the problems with Duplessis' work performance, and that he instructed Raber to prepare a file memorandum on the subject showing the reasons Daigle removed Duplessis from gas measurement (1:63–64; 2:503, 504). The memo which senior engineer Raber prepared, and which Daigle reviewed, reads (G.C. Exh. 3):

MEMORANDUM

TO: Employee's Personnel File

FROM: John Raber

DATE: June 25, 1985

RE: Poor Job Performance and Mis-use of Company Equipment.

Due to continued poor job performance and misuse of Company equipment Anthony Duplessis has been demoted from Assistant Measurement Technician to Laborer. Some specifics of poor job performance and mis-use of company equipment are as follows:

1.) Failure to correctly load charts and determine proper operation of measurement equipment at the LSGC Pend Oreille meter station #1-1145-1 resulting in no record of gas flow during the period of April 16, 1985 thru May 1, 1985 and loss of revenue to the Company.

2.) Failure to properly service, maintain, and check the Delta Gas Shell Pipeline meter station #2120-005 resulting in the clock running down and no record of gas flow during the period of June 12, 1985 thru June 18, 1985 and loss of revenue to the Company.

3.) Mis-use of Company workboat by overspeeding engines after being warned not to by Operations Supervisor, Robert Cure, and resulting in damage to a Johnson 115 H.P. outboard motor and great repair expense to the Company.

This action was taken by E. E. Daigle, V.P. Operations and Engineering and Robert Cure, Operations Supervisor on June 25, 1985 and shall serve as warning that unless job performance improves, Anthony Duplessis' employment will be terminated.

JAR/ld

/s/ John A. Raber

cc: Anthony Duplessis
Ed Daigle
Robert Cure

2. The listed reasons

The first reason listed in Raber's memo is referred to in the record as the Pend Oreille charts. According to Daigle, it was not until the meeting of 12 August that he learned from Ragas that the Pend Oreille charts in question had been the responsibility of Ragas (2:452–453). Daigle testified that when Ragas reported the matter in early May Ragas blamed Duplessis (2:453, 501–502). Ragas testified that the clock was his responsibility and that in early May he reported to Daigle that the problem for no recordation on the charts was a faulty clock (1:121–122). He specifically testified that Duplessis had no responsibility for that location (1:173).

In light of all the evidence, I find that Daigle at no time after his early May conversation with Ragas considered Duplessis as having any responsibility for the Pend Oreille charts, and that by instructing or approving Raber's listing these charts in the 25 June memo, Daigle evidenced an intent to alter the facts in a blatant attempt to increase the odds that the demotion of Duplessis could not be successfully attacked. I further find that Daigle so acted in retaliation against Duplessis because of Daigle's erroneously held belief that Duplessis was the leader of a movement to organize Respondent's employees into, or to join, a union.

The second listed reason is the missing recordation on the charts at Shell Pipeline's station at Nairn, Louisiana. As discussed earlier concerning the events of 21 June, Ragas reported the problem on the June charts (R. Exh. 12) when he telephoned Daigle on 21 June.[32]

There is no question that Ragas and Duplessis did not check the charts for that week at the Shell Nairn station. As Ragas credibly explained, however, about 3 months earlier Shell had replaced the key-controlled lock on the gate to the premises with an electronically controlled gate through which access could be gained only when a Shell employee responded by intercom to a visitor's ringing of a buzzer (1:145–146, 197).

[30] A week later, on 2 July, Cure gave Duplessis a copy of the file memo dated 25 June listing three specific reasons for the demotion (2:337–338). I do not credit Cure's version that he gave the memo to Duplessis on 25 June (2:542, 544).

[31] Daigle also, as I have found, interpreted the visit as an effort to begin organizing a union.

[32] This set of charts covers the period of 10 June through 21 June (2:442; R. Exh. 12).

The Delta Gas employees had been having difficulties in the past with Shell's new gate control system, and this was particularly so for the week in question. Both Ragas (1:147, 151–152) and Duplessis (2:351, 353) each made one or more unsuccessful attempts to gain access that week. Failing in their attempts, both Ragas (1:147, 152, 159, 199) and Duplessis (2:353, 356) reported the matter to Supervisor Cure and asserted that something had to be done. Cure told Ragas to notify the Shell supervisor when he had time. Ragas said he had already done that. Cure then stated that he would speak to a "Mr. David" (1:147–148).[33]

Cure said he would get them (a magnetic) card or key, but he never did (1:149; 2:353), and as late as the hearing, Ragas testified, the access problem remained unresolved (1:185).

According to Daigle, he did not learn until the 12 August conference that his employees were encountering a problem gaining access to the Shell Nairn station (2:432, 450). Daigle testified in an unpersuasive manner and I do not believe him. To the contrary, I find that he learned of the problem from Cure before 24 June. Even by his own admission he learned of the problem on 12 August, yet, as Ragas credibly testified, the problem still persists. This suggests that even if Daigle were credited, he either has done nothing to correct the problem (indicating that he really attaches a low priority to the matter) or his efforts have been unsuccessful (suggesting that the problem is so difficult that any attempt to blame rank-and-filers Ragas and Duplessis for failing to overcome a corporate level problem is reflective of an unlawful motive).

In conclusion I find that Daigle, knowing full well that neither Ragas nor Duplessis was to blame for the incomplete charts, nevertheless listed the Shell Nairn charts for the week in June as a deliberate effort to nail Duplessis because of his protected actions.

We come now to the third listed reason—the overspeeding of the boat engine. There is no dispute that the occasion of Duplessis' demotion was the fact that the portside engine on the company boat Duplessis was driving on 24 June blew a rod (2:540, Cure) or piston (2:384, Duplessis) through the engine block. Daigle testified that, except for a small amount of salvage, the engine had to be junked with the monetary loss estimated at $2200 (2:458–459).

Supervisor Cure reported the matter to Raber and then to Daigle on 24 June (2:456, 458, 541–542). For Daigle this was the "final straw" (1:87) and he told Cure that he did not want Duplessis driving the boat again "and that means he can't do measurement work." (1:87, 2:542).[34]

Cure places the cause of the engine's blowout directly on Duplessis on the belief that Duplessis was overspeeding (operating at excessive throttle) the boat (2:540–541). Daigle believes likewise (1:79, 108; 2:458). The reason they believe this is because several weeks earlier, with Cure riding as a passenger, Duplessis pushed the boat to full throttle. When Cure told him to slow it down to three-quarters Duplessis obeyed (2:339).[35] Cure informed Daigle of this incident (1:79; 2:503, 542, 554). Ragas testified that he operates the Delta Gas boats at no more than three-quarters engine speed, and that an engine can tear apart if operated at sustained full throttle (1:171, 199).

Duplessis admits that on 24 June, just before the engine exploded, he was operating the engine at better than three-quarters throttle, "not quite all the way open." (2:385) Duplessis did so despite his knowledge that the engine had been knocking and apparently was in need of repair (2:388).[36] Ragas was aware of the problem and testified that he was not surprised when the engine threw a rod (1:172). Supervisor Cure also was aware that the engine was knocking (1:165, 172).

Even though Cure was aware of the engine's problem, the previous Saturday, 22 June, Ragas observed Cure and Williams using the boat and a net to trawl for shrimp (1:165, 169). Trawling puts a heavy strain on the engine, and this would be particularly true here because the engines were not equipped with trawling propellers (1:171). However, Daigle did not learn of the trawling until Ragas so testified (2:457).

Regardless of the improper use of the boat by the supervisors, I find that Daigle reasonably blamed Duplessis for the engine's destruction. The evidence indicates that the engine, although a clunker,[37] might have lasted indefinitely had the speed been held to no more than three-quarters throttle. In light of Daigle's knowledge that Cure previously had warned Duplessis about overspeeding the engine, and in view of the report on 24 June that Duplessis was operating the boat when the engine blew out, I find that Daigle reasonably could conclude, without further investigation,[38] that Duplessis was to blame for the engine's destruction.

3. The additional reasons

At the hearing Daigle testified that there were additional reasons for his demoting Duplessis. The first (being the fourth specific reason) was that Duplessis exhibited a poor attitude (1:86; 2:454, 504) in that he appeared not to want to do his job properly (1:86; 2:504). The poor attitude, Daigle testified, was reflected in the fact that whenever there was a problem with a meter Duplessis had some "off-the-wall" excuse or attributed the blame to another employee or to Delta Gas, and he

[33] L. 11 of p. 148 shows "Mr. David." Although I suspect that is a garbled version for "Mr. Daigle," no party has moved to correct the record.

[34] Duplessis would be unable to do measurement work because many of Respondent's stations are located in bays and can be reached only by boat (1:117–118; 2:402–403).

[35] I do not credit Cure's version that Duplessis ignored Cure's instruction and that Cure then did not order Duplessis to obey (2:538, 541).

[36] There is some evidence in the record that the marine repair shop had tried to get Delta Gas to replace an outmoded oil pump system on the engines but that the Company declined to incur the expense (2:388, Duplessis).

[37] The engine had just received some repairs on 31 May (G.C. Exh. 6), but everyone knew that the engine continued to knock.

[38] Daigle did not interview Duplessis nor conduct any further investigation of the matter (2:503).

never accepted responsibility for any problem (2:454–455).[39]

Actually, the poor attitude reason appears to be more of a general category rather than a specific reason. Within this category are specific incidents which Daigle impliedly attributes to Duplessis' poor attitude. Thus, Daigle adds, as an item, complaints from Tennessee Gas inspectors Ralph Sonnier and Tommy Jones that Duplessis was tardy for scheduled meetings and refused to calibrate meters which in turn forced Sonnier and Jones to do the testing while Duplessis sat in a vehicle or "had his mind elsewhere." (1:74–75; 2:510, 515.)

Jones did not testify. Sonnier did, and I find him to be a credible witness. Although Sonnier understands that Jones had complained to Respondent that Ragas and Duplessis were missing scheduled inspections (2:247, 251–252, 254), Sonnier himself never complained to Respondent specifically about Duplessis (2:247, 248). On the other hand, Sonnier explained that for a couple of years the Delta Gas people (Ragas and, later, Duplessis) would be late for scheduled inspections or, generally, they would have to reschedule inspections. Rescheduling was disruptive for Tennessee Gas (2:253). Sonnier testified that on these occasions Ragas would explain that Delta Gas had assigned a higher priority to other duties (2:254, 265).

When Sonnier would call Supervisor Cure to complain, Cure admitted the reassignments and advised Sonnier to call John Raber if he wanted to carry it further. Sonnier would call Raber, who would get the matter resolved for a month or so, and then the problems would begin again (2:254–256).

The testimony of Sonnier confirms that of Ragas (1:174, 178) and Duplessis (2:360–361, 366–368) that Supervisor Cure would override the inspection/testing schedules (mutually worked out with TGP) and order them to handle matters Cure deemed more pressing. The result was either rescheduled inspections or a tardy appearance by Ragas/Duplessis.

As to the issue of complaints by TGP, I find in accordance with the credited testimony of Sonnier, Ragas, and Duplessis. Thus, TGP had complained for 2 years to Cure and Raber. The real problem was that Supervisor Cure would reorder the priorities for Ragas and Duplessis and this would greatly inconvenience TGP—but it was not the fault of Ragas or Duplessis.

I further find that Daigle knew the precise nature of the problem, but seized on the matter as an opportunity to pad his list of charges against Duplessis. This is not to say that Duplessis was perfect, but any mistakes by him were few and minor and not the cause of TGP's complaints. By so padding his list of Duplessis' deficiencies, Daigle, I find, evidenced a secret motive—a motive to punish Duplessis because of Daigle's belief that Duplessis had contacted lawyer Defley for the purpose of organizing a union.

Another item Daigle and Cure specified at the hearing was an alleged failure by Duplessis about late April to change the charts at the Tex Oil Scott Beasley station a half mile from Duplessis' home (1:85–86; 2:510; 2:532–532A, 555–556). Duplessis did not rebut this example.

A final item given by Daigle at the hearing is actually an expansion of the second reason listed in Raber's 25 June memo involving a meter station for Shell Pipeline Company. That is the Shell station at Nairn, Louisiana (1:83, 145; 2:432, 442). The problem there was no record of gas flow for 2 separate weeks, 1 week in May and 1 week in June (1:78). Raber's memo specifies the week in June (which I have discussed) but does not mention the week in May.

Vacillating about the May charts (R. Exh. 10),[40] Daigle initially testified that he did not become aware of the problem about that week until, in essence, his conversation with Ragas on 21 June (2:494). Changing from that position, Daigle testified he was unsure whether he and Ragas discussed that matter, which he describes as a serious problem, but that it was listed in the memo of 25 June after being brought to his attention over a month after the incident (2:496–497). On realizing that Raber's 25 June memo does not mention the May charts, Daigle then testified that as of that date they had not studied everything Duplessis had done and that they did not discover the defective May charts until the "subsequent investigation." (2:498.) Asked when that occurred, Daigle replied that it was "ongoing" and lasted for "several weeks" after 25 June (2:499). It appears to be Respondent's position that this "ongoing" investigation culminated with the 12 August conference Daigle conducted with Cure, Ragas, and Duplessis. However, there is no evidence of any details concerning that investigation between 25 June and 12 August.[41]

I find that there was no such investigation and that the meeting of 12 August was called in response to NLRB Region 15's notice to Respondent that a complaint would issue in this case.

4. Credibility aspects

Daigle testified in an unbelievable manner and I do not credit him on any point except when I have made a favorable finding. Moreover, there is a lack of plausibility to much of his testimony. For example, Daigle testified that it is Respondent's practice to attempt to document all reports of significant disciplinary problems by memorandums placed in the personnel files (2:468, 475, 486). Yet Daigle admits no such documentation was made concerning the alleged complaints from Ralph Sonnier and Tommy Jones of Tennessee Gas and J. C. Ragas and

[39] Another example of Duplessis' "poor attitude" was his alleged failure to cooperate on 12–13 August when Daigle interrogated him concerning who installed the Pend Oreille and Shell Nairn charts. As I have found, Respondent's reason for this interview was not grounded on business reasons but was, as counsel for the General Counsel argues, called to gather evidence to justify its discriminatorily motivated demotion of Duplessis (Br. at 20). Also as previously found, the mid-August meeting came after Respondent was notified that the instant complaint would issue. Duplessis was justified in doubting the sincerity of the interview. Moreover, it is quite understandable that in August Duplessis would have difficulty recalling work events in May and June.

[40] These charts cover the period of 4 May through 16 May (2:433; R. Exh. 10).

[41] I find that Raber's memo of 9 August (R. Exh. 13-1) was not the result of any "ongoing" investigation by Respondent, but instead was a recordation of a complaint Raber purportedly received that day from Tennessee Gas.

Supervisor Cure, even though such complaints supposedly began at least 3 months before Respondent demoted Duplessis (1:74, 76; 2:510–511).

According to Daigle, he even dispatched Raber in the April/May timeframe to meet with Sonnier and Jones regarding the matter (1:76). Supposedly that is when Sonnier and Jones threatened to recommend that Tennessee Gas cease doing business with Respondent if Respondent's gas measurement procedures (specifically, meeting schedules for testing) did not improve (1:81; 2:482–483, 514–515). Again, Daigle concedes that Respondent made no documentation on this (2:515). Daigle also admits that he never personally spoke with Ragas or Duplessis about this but that he understands Raber did (2:515), although he concedes there is no corporate notation about it (2:516). Raber did not testify. I disbelieve all this. More discrepancies could be detailed, but that would only lengthen this decision. For example, Daigle admits that Duplessis was in a "very critical position," was not performing his job, and was costing Delta Gas a lot of money (2:511). Yet nothing was done about Duplessis; not even counseling.

Daigle testified that the reason he was reluctant to discipline Duplessis was the "hassel" he experienced after he discharged Raymond Antoine in July 1984 for severely damaging a truck engine by driving it without oil and thereby creating a $2600 repair bill (2:462, 486).[42] The "hassel" comes from the stress Daigle supposedly experienced during the ensuing unemployment claim, and appeal, which Antoine unsuccessfully pursued (2:512, 523). Therefore, Daigle was reluctant to impose any discipline on Duplessis without "proof positive." On 24/25 June Daigle felt he had positive proof of the "bad job" Duplessis was doing (2:512).

Notwithstanding Daigle's desire to have "proof positive," and despite allegedly receiving unfavorable reports from Supervisor Cure, employee Ragas,[43] and others about Duplessis' poor attitude (which assertedly was manifested by incidents of poor work performance) up until the demotion, Daigle admits that he *never* spoke to Duplessis about the need to correct his attitude (2:505–509). More significantly, despite Daigle's desire for "proof positive," he admits that he never made a file notation as to any of these alleged reports (2:501, 511).

Daigle concedes that the 1-week suspension of Antoine constituted a warning to him to shape up (2:462, 512–513), and he admits that no warning to shape up was given to Duplessis (2:513). When asked why the difference of a warning to Antoine but not to Duplessis,[44] Daigle replied, rather vaguely, "Well, I think it was just the build up of all the events that were going on with him . . . . So when I found out an engine had been completely destroyed, I said 'I cannot take any more of that.'" (2:513)

Daigle testified that he did not fire Duplessis on 25 June because he had personally hired him and had initially thought Duplessis would make a good measurement technician. Because he felt personally responsible for Duplessis' being there, Daigle did not want to put him "back on the streets" by firing him (2:486–487). I find Daigle to be an unreliable witness.

5. Conclusions

I have found that the protected conduct of Duplessis, leading Respondent to the erroneous belief that Duplessis was leading a union organizing campaign, was a motivating factor in Respondent's decision to demote him. Did Respondent carry its burden of showing that notwithstanding Duplessis' protected conduct (and Daigle's erroneous suspicion), Delta Gas would have demoted Duplessis? Yes.

The reason I answer the question affirmatively is because of Daigle's testimony that Duplessis' destruction of the boat engine was the "final straw" (1:87) and that he could not take "any more of that." (2:513.) Moreover, Daigle demoted Duplessis rather than firing him as he had done Antoine.[45] In that respect the discipline was a measured action balancing his feeling of personal responsibility for Duplessis' presence against the needs of Delta Gas. Thus, I find that Respondent would have demoted Duplessis on the boat incident alone notwithstanding its additional unlawful motivation.[46]

Moreover, the nature of the incident itself renders this position plausible. Duplessis had been warned on the speed; he exceeded that safe speed on an engine which he knew was defective; the engine was destroyed;[47] and past precedent supports Respondent's discipline. Accordingly, I shall dismiss this allegation of the complaint.

Conclusions of Law

1. Delta Gas is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. By coercively interrogating employees in May-June 1985 concerning their protected concerted activities, Respondent has violated Section 8(a)(1) of the Act.

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[42] Figuring in the discharge was the fact that Antoine had been suspended a week in February 1984 for failing to check an industrial meter at the Shell Nairn station for an entire month (2:460–462). That industrial meter normally registered about 9 million cubic feet of gas each month (2:462).

[43] Ragas specifically denies complaining about Duplessis to Daigle over the Shell Nairn charts (2:238), and he credibly testified that Daigle never voiced any complaints to him about Duplessis (1:120).

[44] Daigle (2:459–460, 489–490, 505) and Ragas (1:124, 195, 203–206) agree that Daigle had given Ragas a "severe tongue lashing" in the spring of 1985 over Ragas' failure to drive the boat in a fog (of several days duration) to check the Joseph Bayou station. Yet not a word was ever said to Duplessis about his alleged multitude of deficiencies.

[45] As I have observed earlier, Duplessis' demotion was by transfer to the construction crew where he now works as a laborer digging ditches with a shovel. Although Duplessis sustained no immediate loss in pay, his career ladder is different and does not include the skilled work progression he previously enjoyed.

[46] All the other reasons Respondent gave were the unlawfully motivated makeweights it advanced in an effort to increase its chances of ensuring the success of the demotion.

[47] Even though Daigle probably was aware that the marine repair shop had recommended replacing the outmoded oil pump, there is nothing to indicate that the engine could not have lasted much longer had it been operated with extra care. The trolling by Supervisor Cure was an abuse of that standard of extra care, but it would not seem that such conduct by Cure would justify Duplessis in overspeeding the engine.

3. By threatening employees on 21 June 1985 with discharge if they engaged in union or other protected concerted activities, Respondent has violated Section 8(a)(1) of the Act.

4. By interrogating employees on 12–13 August 1985, Respondent did not violate Section 8(a)(1) of the Act.

5. By demoting A. J. Duplessis on 25 June 1985, Respondent did not violate Section 8(a)(1) and (3) of the Act.

6. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[48]

ORDER

The Respondent, Delta Gas, Inc., a subsidiary of Louisiana Energy & Development Corporation, New Orleans, Louisiana, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Coercively interrogating employees concerning their protected concerted activities.

(b) Threatening employees with discharge if they engage in union or other protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its Homeplace, Louisiana, and New Orleans, Louisiana offices copies of the attached notice marked "Appendix."[49] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[48] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[49] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."